

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

NEWAGE, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-10819 (LSS)

(Jointly Administered)

**Objection Deadline: April 21, 2023 at 4:00 p.m. (ET)**

**Hearing Date: To Be Determined**

**PURCHASER'S MOTION TO RECOGNIZE MODIFICATION OF DEBTORS'  
SCHEDULE OF CONTRACTS AND UNEXPIRED LEASES SUBJECT  
TO ASSUMPTION AND ASSIGNMENT**

DIP Financing, LLC (“DIP Financing”) and EYWA LLC (“EYWA”) (collectively, “Purchaser”), hereby move this Court for an Order recognizing the modification of the Schedule of Contracts and Unexpired Leases Subject to Assumption and Assignment [Docket No. 214], as reflected in **Schedule A** attached hereto, to remove a commercial lease between NewAge, Inc. and WICP MT TECH 4, LLC for office and warehouse space in Lindon, Utah (the “Lease”), and permitting rejection of the Lease in accordance with the *Debtors’ Third Amended Proposed Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* [Docket No. 387] (the “Chapter 11 Plan”) of the above-captioned debtors and debtors in possession (the “Debtors”). In support of this Motion, the Purchaser states as follows:

1. On August 30, 2022 (the “Petition Date”), the Debtors commenced these cases (the “Chapter 11 Cases”) by each filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”).

---

<sup>1</sup> The last four (4) digits of each of the Debtors’ federal tax identification number are NewAge, Inc., (2263), Ariix LLC (9011), Morinda Holdings, Inc. (9756), and Morinda, Inc. (9188). The Debtors’ address is 7158 S. FLSmidth Dr., Suite 250, Midvale, Utah 84047.

2. On September 30, 2022, this Court entered its *Final Order Authorizing the Debtors to Obtain Postpetition Financing, et al* (Doc. 160) (“DIP Financing Order”), authorizing and approving the Senior Secured Debtor-in-Possession Term Loan Agreement (Doc. 160-1) (the “DIP Loan Agreement”).

3. On or about October 17, 2022, this Court entered its *Order (I) Authorizing the Sale of Assets of the Debtors Free and Clear of All Liens, Claims, Encumbrances, and Interests; (II) Approving the Final Asset Purchase Agreement; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* (Doc. 224) (the “Sale Order”), authorizing the Debtors to sell substantially all of their assets to DIP Financing, LLC, or its assigns in accordance with the Sale Order and the Final Purchase Agreement (as defined in the Sale Order) attached to the Sale Order as Composite Exhibit A, and incorporated herein by reference.

4. Pursuant to the Sale Order, the Debtors were authorized to assume and assign certain executory contracts.

5. Section 11.1 of the Debtors’ confirmed Chapter 11 Plan provides that the discretion to assume executory contracts until the Plan’s effective date, at which time any contract not previously assumed will be rejected. (Doc. 527 at 11; Doc 527-1 at 48).

6. The sale to Purchaser, as authorized and directed pursuant to the Sale Order, closed on October 17, 2022 (“Closing”).

7. Prior to Closing, the Purchaser performed an expedited due diligence to determine, *inter alia*, the executory contracts that were beneficial to the continued operations of the business as a going concern.

8. Based on that initial due diligence, the Lease between NewAge, Inc. and WICP MT TECH 4, LLC for office and warehouse space in Lindon, Utah, was included in the Schedule 1.1(d) of the APA as an Acquired Lease of Real Property, and was included on the Debtors' Notice of Proposed Assumption and Assignment of Executory Contracts [Docket No. 214] (the "Assumption Notice"), subject to continued pre-effective date diligence.

9. Upon further analysis and concluding its diligence prior to the Plan's effective date, the Purchaser has determined that the Lease is improvident, burdensome to ongoing operations, and of no benefit to the Purchaser.

10. The Debtors and the Purchaser have since agreed to amend Schedule 1.1(d) to remove the Lease from the effect of the APA, and similarly amend the Assumption Notice to remove the Lease, upon this Court's approval of same.

11. Removal of the Lease from Schedule 1.1(d) and the Assumption Notice will result in rejection of the Lease pursuant to the Plan and Confirmation Order upon the Effective Date.

12. By amending the Assumption Notice to remove the Lease, along with removing the Lease from Schedule 1.1(d), the Purchaser intends that the Lease will no longer be subject to the Court's Sale Order, and be rejected as of the Effective Date pursuant to the Plan and Confirmation Order upon the Effective Date.

13. Schedule A attached hereto removes WICP MT TECH 4, LLC (previously on line 180) from the list of executory contracts and unexpired leases to be assumed by the Debtors and assigned to Purchaser.

14. No party, other than WICP MT TECH 4, LLC, the lessor of the office and warehouse space in Lindon, Utah, which is the subject of the Lease, is affected by this Motion.

### **NOTICE**

15. Notice of this Motion shall be provided to: WICP MT TECH 4, LLC, Debtor, Office of the United States Trustee, and the Unsecured Creditors Committee. For WICP MT TECH 4, LLC, the Movants shall serve this Motion on its registered agent (which is the address reflected in prior notices), and at its principal address.

WHEREFORE, the Purchaser respectfully requests this Court enter an order recognizing the modification of the APA and Assumption Notice, as further set forth herein and attached hereto as Schedule A, and granting such other and further relief as this Court deems necessary and proper.

Dated: April 7, 2023

Respectfully submitted,

**PACHULSKI STANG ZIEHL & JONES LLP**

By: /s/ Steven W. Golden  
Steven W. Golden (DE Bar No. 6807)  
919 N. Market Street, 17<sup>th</sup> Floor  
Wilmington, DE 19801  
Tel: (302) 652-4100  
[sgolden@pszjlaw.com](mailto:sgolden@pszjlaw.com)

**SHUMAKER, LOOP & KENDRICK, LLP**

By: /s/ Steven M. Berman, Esq.  
Steven M. Berman, Esq.  
Fla. Bar No.: 856290  
[sberman@shumaker.com](mailto:sberman@shumaker.com)  
[bgasaway@shumaker.com](mailto:bgasaway@shumaker.com)  
101 E. Kennedy Blvd., Suite 2800  
Tampa, Florida 33602  
Phone: (813) 229-7600

*Counsel for the Movants*